

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WBS, INC., a California Corporation,)	Case No. CV 15-07251 DDP (JCx)
)	
Plaintiff,)	
)	
v.)	ORDER GRANTING MOTION FOR
)	ATTORNEY FEES [Dkt. No. 255]
JUAN CROUCHER, an individual; CROUCIER PRODUCTIONS, INC., a California Corporation; ROB HOFFMAN, an individual; ONE MANAGEMENT, a business of unknown formation,)	[Dkt. 183 (closed case)]
)	
Defendants.)	
)	

Presently before the court on remand from the United States Court of Appeals for the Ninth Circuit is Defendant Juan Croucier's Motion for Attorney Fees (Dkt. 183). Having considered the submissions of the parties, oral argument, Defendant's supplemental filing, and the objections thereto, the court grants the motion and adopts the following Order.

I. Background

The facts of this case are set forth in great detail in this

1 court's prior orders. In short, Plaintiff asserted that in 1997,
2 a partnership that owned trademarks associated with the rock band
3 RATT
4 assigned its rights in the marks to Plaintiff. Plaintiff brought
5 trademark infringement claims in this Court against Defendants and
6 Defendant Croucier filed a counterclaim against Plaintiff.

7 Croucier and Plaintiff brought cross-motions for summary
8 judgment on Plaintiffs' infringement claims. This Court denied
9 Plaintiff's motion for summary judgment and granted Croucier's
10 motion, concluding that the evidence established beyond dispute
11 that the supposed 1997 assignment of the trademarks to Plaintiff
12 was invalid. Plaintiff sought reconsideration of the court's
13 order, arguing, among other things, that Croucier was collaterally
14 estopped and barred by the Rooker-Feldman doctrine from challenging
15 the validity of the assignment of the marks to Plaintiff. The
16 court denied Plaintiff's motion for reconsideration without
17 considering the merits of Plaintiff's collateral estoppel argument,
18 observing that Plaintiff's new evidence in support of that argument
19 could have been, but was not, presented at the summary judgment
20 stage. The court further explained that the Rooker-Feldman
21 doctrine is inapplicable because Croucier was not a party to any
22 related state court suit. Although the court also observed that
23 Plaintiff's counsel had repeatedly violated the letter and spirit
24 of the local rules of this district, the court nevertheless denied
25 without comment Croucier's motion for attorney's fees.

26 The parties both appealed, on various grounds. In an
27 unpublished disposition, the Ninth Circuit affirmed in all
28 respects, save one. (Dkt. 245) With respect to reconsideration of

1 summary judgment, the appellate court agreed that the Rooker-
2 Feldman doctrine is inapplicable and addressed Plaintiff's
3 collateral estoppel argument on the merits. The court explained
4 that estoppel or issue preclusion does not apply because, even if
5 Croucier's partner was a party to a state-court proceeding alleged
6 to have preclusive effect, Croucier himself was not such a party,
7 and mere partnership does not establish privity under California
8 law. (Dkt. 245 at 6-7.)

9 The appellate court did, however, vacate this Court's denial
10 of Croucier's motion for attorney's fees. As the court observed,
11 discretionary decisions regarding attorney's fees may be set aside
12 "if the record does not support the district court's decision."
13 (Dkt. 245 at 8 (quoting Mattel, Inc. v. Walking Mountain Prods.,
14 353 F.3d 792, 815 (9th Cir. 2003)). The Ninth Circuit remanded for
15 this Court to determine whether attorneys' fees are appropriate "in
16 light of the objectively unreasonable arguments WBS has advanced,
17 its vexatious approach to this litigation, and WBS' repeated
18 failures to follow procedural rules." (Dkt. 245 at 8.)

19 **II. Discussion**

20 A. Legal Standard

21 Courts may award reasonable attorney fees to the prevailing
22 party in "exceptional" trademark cases. 15 U.S.C. § 1117(a).
23 Courts look to the totality of the circumstances in determining
24 whether a case is exceptional, such that it "stands out from others
25 with respect to the substantive strength of a party's litigating
26 position (considering both the governing law and the facts of the
27 case) or the unreasonable manner in which the case was litigated."
28 SunEarth, Inc. v. Sun Earth Solar Power Co., 839 F.3d 1179, 1180

1 (9th Cir. 2016) (quoting Octane Fitness, LLC v. ICON Health &
2 Fitness, Inc., 572 U.S. 545, 554 (2014)). Relevant factors
3 include, but are not limited to, “frivolousness, motivation,
4 objective unreasonableness (both in the factual and legal
5 components of the case) and the need in particular circumstances to
6 advance considerations of compensation and deterrence.” Octane
7 Fitness, 572 U.S. at 554 n.6 (quoting Fogerty v. Fantasy, 510 U.S.
8 517, 534 n. 19 (1994)). The exceptional case standard applies
9 equally to prevailing plaintiffs and prevailing defendants. Gracie
10 v. Gracie, 217 F.3d 1060, 1071 (9th Cir. 2000).

11 B. This is an “exceptional” case

12 This Court has, notwithstanding its initial denial of attorney
13 fees, repeatedly highlighted Plaintiff’s improper litigation
14 conduct. In its summary judgment order, for example, the court
15 noted that Plaintiff had violated several local rules and
16 unconvincingly attempted to shift blame for those violations to
17 Croucier’s counsel. (Dkt. 181 at 1 n.1). The court further
18 cautioned Plaintiff’s counsel to comply with all procedural rules,
19 on pain of sanctions. Id. Nevertheless, the violations continued.
20 As set forth in this Court’s order denying reconsideration,
21 Plaintiff failed to timely file documents, filed unauthorized
22 briefs, and provided explanations for those violations that were
23 not credible. (Dkt. 222 at 10.) These examples, though not
24 exhaustive, are illustrative of Plaintiff and its counsel’s
25 unreasonable approach to this litigation.¹

27 ¹ Plaintiff’s baseless ex parte requests, requests for
28 sanctions, and allegations of fraud and deceit against Croucier’s
counsel are too numerous to list here in full.

1 The bulk of Plaintiff's opposition to Croucier's fee motion is
2 devoted to the argument that Plaintiff had a "legal and reasonable
3 basis for its claims." As an initial matter, Plaintiff misstates
4 the relevant standard, citing to several non-binding and outdated
5 authorities that do not apply the "exceptional case" framework.
6 (Opp. at 4:28-5:12.) Furthermore, the Ninth Circuit has rejected
7 Plaintiff's contention, finding that the arguments Plaintiff
8 advanced were "objectively unreasonable." This Court cannot,
9 therefore, avoid the conclusion that Plaintiff's position was
10 substantively weak.

11 In his objections to Croucier's supplemental briefing,
12 Plaintiff suggests that Plaintiff's litigation position could not
13 have been meritless because the Ninth Circuit found that
14 Plaintiff's appeal was not frivolous or "wholly without merit."
15 (Dkt. 254 at 1:15-24.) Plaintiff appears, however, to conflate
16 distinct issues. Croucier sought attorney fees on appeal under 15
17 U.S.C. § 1117(a), and Plaintiff failed to oppose the motion. (Dkt.
18 247, 248.) The Ninth Circuit found the appeal "exceptional"
19 because Plaintiff (1) advanced the same "objectively unreasonable"
20 arguments made in Plaintiff's motion for reconsideration of this
21 Court's summary judgment order and (2) pursued an unreasonable,
22 "scattershot" approach on appeal, challenging "almost every adverse
23 determination of the district court regardless of merit." (Dkt.
24 247 at 2.) The Ninth Circuit therefore granted fees under the
25 Lanham Act. (Id.)

26 The court did not, however, grant fees pursuant to Federal
27 Rule of Appellate Procedure 38 or 28 U.S.C. § 1927. The former
28 allows an award of "just damages" and costs if a court of appeals

1 determines that an appeal is frivolous, while the latter allows for
2 fees to be levied against any attorney or other person who
3 "multiplies the proceedings in any case unreasonably and
4 vexatiously." Fed. R. App. Pro. 38; 28 U.S.C. § 1927. In denying
5 fees under Rule 38 and Section 1927, the Ninth Circuit explained
6 that the appeal was not frivolous because "[t]he result of the
7 appeal was not obvious at the outset and the 'claims of error' were
8 not 'wholly without merit.'" (Dkt. 247 at 3.)

9 The Ninth Circuit's characterization of Plaintiff's appeal in
10 the sanctions context does little, however, to support Plaintiff's
11 argument that this case is not exceptional for Lanham Act purposes.
12 First, the circuit found that even the appeal was exceptional under
13 the Lanham Act, and awarded appellate fees on that basis. Second,
14 the circuit's substantive decision on Croucier's appeal of the
15 attorney fees issue is unambiguous in its description of "the
16 unreasonable arguments WBS has advanced, its vexatious approach to
17 this litigation, and WBS' repeated failures to follow procedural
18 rules." (Dkt. 245 at 8.) See Mattel, 353 F.3d at 815 ("[W]e will
19 only remand if the record does not support the district court's
20 decision."). That pronouncement, in conjunction with this Court's
21 observations, leaves little doubt that this trademark case stands
22 out from others with respect to both the substantive weakness of
23 Plaintiff's litigation position and the unreasonable manner in
24 which the case was litigated. This case therefore qualifies as
25 exceptional under the Lanham Act, and the court finds that a grant
26 of attorneys' fees is warranted.

27 C. Amount of fees
28

1 The court turns, then, to the quantum of fees. Having
2 reviewed the submissions of the parties, the court finds that
3 Defendant's lodestar figure of \$232,927.50 is the reasonable
4 product of a reasonable number of hours at reasonable hourly
5 rates.^{2 3} The court further notes that Plaintiff provides
6 virtually no substantive argument as to why the amount sought is
7 unreasonable. Plaintiff does not, for example, dispute that
8 counsel's rates are reasonable. Instead, Plaintiff asks that the
9 court strike counsel's entire billing statement, contending that
10 "[a] number of the hours calculated by the Defendant were redundant
11 or excessive," and that counsel intentionally obfuscated the nature
12 of certain billed items. (Opp. at 20:19-22.) Plaintiff does not,
13 however, identify any particular item that is redundant or
14 excessive, and his characterization of the billing statement is
15 simply inaccurate. Indeed, Defendant's counsel Stephen Doniger
16 does not appear to have billed more than 6.9 hours for any single
17 item, while the vast majority of billed items are relatively fine-
18 grained entries of less than one hour. Plaintiff's suggestion that
19 counsel's billing statements are the product of defense counsel's
20 "propensity for falsehoods and fabrications" is neither persuasive
21 nor productive. (Opp. at 20:23.)

22 D. Sanctions against Plaintiff's counsel

23 Defendant's fee motion also seeks to hold Plaintiff's counsel
24 responsible for some fees pursuant to 28 U.S.C. § 1927. As stated

25
26 ² Croucier's attorneys' rates range from a relatively modest
\$315 per hour to no more than \$565 per hour.

27 ³ Although Defendant previously sought fees in the amount of
28 \$253,528, his most recent filing seeks the lower sum of
\$232,927.50. (Dkt. 252 at 9.)

1 above, Section 1927 allows for fees to be levied against any
2 attorney or other person who "multiplies the proceedings in any
3 case unreasonably and vexatiously." 28 U.S.C. § 1927. Although,
4 as explained above, the Ninth Circuit denied Defendant's request
5 for appellate fees under Section 1927, the Ninth Circuit's
6 substantive decision remanding this fee matter to this Court does
7 not appear to foreclose a fee award against Plaintiff's counsel.
8 Indeed, the court's references to Plaintiff's "vexatious approach
9 to this litigation" and "repeated failures to follow procedural
10 rules" suggest that such an award would be justified. In light of
11 that suggestion, and upon further review of the record, this Court
12 finds that Plaintiff's counsel Drew Sherman and Adli Law did
13 unreasonably and vexatiously multiply the proceedings in this case.
14 The court further finds that Defendant's submissions adequately
15 identify the particular billing items attributable to counsel's
16 improper conduct.⁴

17 Although that list is too long to re-state here, and this
18 Court declines to consider Plaintiff's counsel's conduct in other,
19 unrelated matters, counsel's response to the instant fee motion is
20 representative of Plaintiff's approach to this litigation. After
21 Defendant filed this motion, Plaintiff filed a motion to strike the
22 fee motion for failure to meet and confer, even though Plaintiff
23 (1) conceded that the parties had met and conferred regarding the
24

25 ⁴ After remand from the Ninth Circuit, Defendant filed
26 supplemental exhibits, including a billing statement that
27 identifies particular line items attributable to Plaintiff's
28 counsel's unreasonable conduct. Plaintiff's objections to
Defendant's supplemental submissions do not include any objections
to these particular exhibits, nor does Plaintiff address the
supplemental billing statements in any way.

1 fee motion and (2) himself failed to meet and confer prior to
2 filing the motion to strike. (Dkt. 188.) Plaintiff's counsel also
3 requested sanctions against Defendant's counsel, as he has
4 frequently done. (Id.) Plaintiff then filed an ex parte
5 application to shorten time for the hearing on the motion to
6 strike, seeking to preempt the fee motion. (Dkt. 189.) This Court
7 summarily denied both the motion to strike and ex parte
8 application. (Dkt. 191, 229.) Plaintiff also filed an improper
9 motion for reconsideration, which was stricken, before then
10 correctly filing the same motion, which, as discussed in this
11 Court's order denying reconsideration, raised meritless arguments
12 and baselessly accused Defendant's counsel of fraud on the court.⁵
13 (Dkt. 192, 198.) Only then did Plaintiff finally file an
14 opposition to Defendant's fee motion. As discussed above, that
15 opposition included little relevant substantive argument and again
16 sought sanctions against Defendant's counsel and accused him of
17 fraud. (Dkt. 202.)

18 Although the pattern and substance of Plaintiff's numerous
19 filings might itself support a sanctions award under Section 1927,
20 evidence in the record confirms that counsel often acted in bad
21 faith to prolong the litigation, with no legitimate purpose.
22 Indeed, it appears from the record that counsel pursued certain
23 strategies for no reason other than to inconvenience opposing
24 counsel, and in some instances may have acted in opposition to his
25

26
27 ⁵ Plaintiff also filed an ex parte application to shorten time
28 on the motion for reconsideration, seeking to have the motion for
attorney's fees. (Dkt. 200.)

1 client's wishes.⁶ Accordingly, Drew Sherman and Adli Law shall be
2 liable for \$85,357.50 of the \$232,927.50 awarded to Defendant
3 Croucier.

4 **III. Conclusion**

5 For the reasons stated above, Defendant's Motion for Attorney
6 Fees is GRANTED. Defendant Croucier shall recover \$232,927.50 in
7 attorney fees. Plaintiff's counsel Drew Sherman and Adli Law shall
8 be liable for \$85,357.50 of that amount.

9
10
11 IT IS SO ORDERED.

12
13
14 Dated: March 11, 2020



DEAN D. PREGERSON
United States District Judge

25 ⁶ In light of the apparent deterioration of the relationship
26 between Plaintiff and counsel, the court will not recite specific
27 examples here. The record is replete, however, with examples of
28 counsel's unprofessional conduct and communications, ranging from
the merely profane and disrespectful to the offensive impugment of
opposing counsel's religious practices and repeated, baseless
threats of sanctions.